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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,850	03/19/2004	Joseph J. Walto	26.2.C20/C/USA	7511

7590  
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04/24/2007

EXAMINER

UNDERWOOD, DONALD W

ART UNIT

PAPER NUMBER

3652

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/24/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

# Office Action Summary

Application No.

10/804,850

Applicant(s)

WALTO ET AL.

Examiner

Donald Underwood

Art Unit

3652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 04/05/07.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 2-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>040507</u> .  | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 04/05/07 has been entered.

#### Requirement for Information Under 37 CFR § 1.105

Applicant and the assignee of this application are required under 37 CFR 1.105 to provide the following information that the examiner has determined is reasonably necessary to the examination of this application.

The information is required to extend the domain of search for prior art. The publication dates of the last five entries on the IDS filed 04/05/07 and Rubber-Over-Tire Tracks filed 07/10/06 should be provided.

The fee and certification requirements of 37 CFR § 1.97 are waived for those documents submitted in reply to this requirement. This waiver extends only to those documents within the scope of this requirement under 37 CFR § 1.105 that are included in the applicant's first complete communication responding to this requirement. Any supplemental replies subsequent to the first communication responding to this requirement and any information disclosures beyond the scope of this requirement under 37 CFR § 1.105 are subject to the fee and certification requirements of 37 CFR 1.97.

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In responding to those requirements that require copies of documents, where the document is a bound text or a single article over 50 pages, the requirement may be met by providing copies of those pages that provide the particular subject matter indicated, the subject matter found in applicant's disclosure.

The applicant is reminded that the reply to this requirement must be made with candor and good faith under 37 CFR 1.56. Where the applicant does not have an item of required information, a statement that the item is unknown will be accepted as a complete response to the requirement for that item.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 2, 5, 7, 9, 10, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Woerner in view of Finn Skid Steer 250 or vice versa.

It would have been obvious to provide a hood over the engine in Woerner and to extend the arms and add an actuator and attachment as claimed for the arms and attachment in Woerner to provide for handling dirt in view of the teaching in Finn Skid Steer 250.

It would have also been obvious to substitute tracks as taught by Woerner for the wheels in Finn Skid Steer 250 to provide a machine for use on soft dirt. It appears that the arms in Finn Skid Steer 250 do not completely drop below the hood but claim 2 is broad enough to be met by loader arms whose lower ends drop below the hood, i. e., claim 2 does not require that the complete arm drop below the hood. The front ends of the arms in Finn Skid Steer 250 clearly drop below the hood.

Claims 3, 4 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Finn Skid Steer 250 in view of Woerner as applied to claims 2 and 7 above, and further in view of Bamford.

It would have been obvious to substitute a single arm and actuator including a cross member for the double arms in Finn Skid Steer 250 in view of the teaching in Bamford. See cross member 70 and actuator link 73 in Bamford. This would have been an obvious substitution of equivalent arms.

Regarding claim 4, whether the arm was located on the right or left side of the frame would have been an obvious matter of choice since one arrangement provides no unobvious result over the other.

Claims 2, 5, 7, 9, 10, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rubber-Over-Tire Tracks in view of Woerner.

It would have been obvious to provide the motor under the hood in Rubber-Over-Tire Tracks in view of the teaching in Woerner (element 20).

Claims 3, 4 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rubber-Over-Tire Tracks in view of Woerner as applied to claims 2 and 7 above, and further in view of Bamford applied to Rubber-Over-Tire Tracks as applied to Finn Skid Steer 250 above.

Regarding claim 4, the remarks set forth in the preceding rejection regarding claim 4 are herein repeated.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Australian patent 595779.

It would have been obvious to provide a cover between sides 20 to extend over the engine in reference since the use of engine covers is conventional to protect engines. This cover would comprise a hood and the lower ends of the arms would be lower than the added cover when the arms are lowered. Claim 2 does not set forth that the complete arm is below the cover. See figure 3 of the reference which shows uprights on opposite sides.

Regarding Bobcat's Prior Art statement, this statement has been carefully considered but not deemed persuasive. First it addresses claims not under examination in the instant case. Second applicant's statements on patentability have no probative value since it is the Office's job to determine patentability.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald Underwood whose telephone number is 571-272-6933. The examiner can normally be reached on Mon-Thursday 7:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Mackey can be reached on 571-272-6933. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*Donald Underwood* 04/20/07  
Donald Underwood  
Primary Examiner  
Art Unit 3652

042007